

Executive Order
82-2120/8

18 February 1982

MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
FROM: STAT
Deputy General Counsel
SUBJECT: Friday Meeting With Secretary Weinberger
Regarding Executive Order on Classification

1. The Secretary of Defense has proposed amending the draft Executive order on classification to protect certain technological data that he believes cannot be protected adequately under current standards.
2. The proposal was initiated to enable the United States to:
 - a. protect sensitive national security information, particularly militarily critical technology and operational data developed solely for the use of the Armed Forces;
 - b. prevent transfer of sensitive United States technology to foreign powers on a silver platter;
 - c. rectify a perceived inability under the current order to classify certain technological data;
 - d. facilitate dissemination and use of certain information by federal personnel and contractors by removing trustworthiness requirements and establishing only minimal controls over such data.

Specifically, the proposal (Tab 1) authorizes the Secretary of Defense to classify information expected to cause the United States to lose a military technological or operational advantage. As drafted, it:

e. authorizes the Secretary of Defense to classify information that if disclosed could cause the United States to lose a military technological or operational advantage;

f. allows classification without regard either to current classification levels or safeguarding and clearance requirements;

g. permits de facto creation of alternative classification scheme including lesser classification levels;

h. enables the Secretary of Defense to promulgate regulations binding on all agencies.

I support, in principle, the DoD proposal to ensure protection of technological data, but believe the approach raises serious problems that need to be resolved.

3. In my view the DoD proposal runs counter to the very essence of national security controls. Its adoption would dilute the classification order in that it contemplates providing classified information to noncleared personnel and authorizes widespread dissemination of classified data without regard to established safeguarding requirements. This attempt to "have it both ways," I believe, will result in a meaningless classification scheme. Our ability to keep technological information "classified" depends, at least in part, on the strength of our efforts to properly safeguard it.

4. Moreover, I believe the current draft Executive order does provide authority to protect such information adequately. The draft authorizes classification upon a showing that disclosure of information could damage the national security. Such damage would include, I believe, the loss of technological advantage. Trustworthiness requirements, which DoD would eliminate for such technological information, should be retained, but the current requirements offer sufficient flexibility to permit less stringent standards.

5. For this reason, I propose as an alternative that we cooperate with DoD to seek an amendment to the NSC directive implementing the order. That amendment could lessen, but not eliminate, safeguarding standards for sensitive but routinely used technological data. Since the current directive now contains a similar although more limited provision, my proposal is not likely to receive significant adverse reaction.

6. A more detailed review of the DoD proposal is attached for your information at Tab 2. It concludes, and I agree, that we should support DoD's objectives, but be wary of the approach.

STAT



Attachments:
As stated.